

To the AUTHOR of a Defence of the Proceedings of the House of Commons, &c.



S I R,

Great Britain House of Commons
Saturday, Jan. 6.

I Last night perused your Pamphlet, in which you say, my Essay was put into your hands while you were writing, &c. Had not your thoughts been otherwise employed, you might possibly have *understood* what you read; for I cannot suspect a gentleman of your rank to be capable of wilful misrepresentation. When I am speaking of the authority of precedents, you misapprehend my meaning, or you would not have charged me with maintaining that *the House of Commons, as a judicature without appeal, ought not to be governed by precedents.* I said, "In the *exercise* of acknowledged powers, especially the judicial, these are justly allowed the greatest authority." See reasons for this, page 31. *et passim.* But that any body of men assuming a power without drawing the attention of those whose rights might be thereby affected, cannot, by such usurpation, gain a legal title to such power. The House of Commons frequently applied by humble petition to Queen Elizabeth, for the release of Members imprisoned for words spoken in the House: Nay, the form of requesting freedom of speech, as a favour from the Crown, is still continued. But will any man maintain, that this imprisonment of a Member was an exertion of legal power? This is a much stronger case; for here the people, by their Representatives, acquiesced and submitted to the claim, when all its consequences were seen.

You will be singular, in not understanding what I mean by ~~the~~ legislative power, ~~of Parliament.~~ It is the governing *will* of the Community, which makes or alters laws. The judicial power explains and applies these laws to particular cases; or in a new case, not expressly provided for, *decides*, upon analogous reasoning. My grand objection to the power of Expulsion, is, That, in the exercise of this pretended power, the House of Commons make a law for each particular object, at the *will* of a majority, which,

to my apprehension, would be rather an arbitrary act, even in the whole Legislature. Whether this be just or not, your distinction between legislative and judicial power is ridiculous. Many subordinate Legislatures exist in the several towns of the kingdom. Every power which is not supreme, cannot be therefore judicial, or negatively not legislative. What if I should affirm, that no existing power in any state is, properly speaking, *supreme*. Even the authority of Parliament is subordinate to the fundamental constitution of the established government. They can make Laws, but not Legislators. Parliament cannot grant to the House of Commons a power of Expulsion *in the extent contended for*, because it is inconsistent with the judicial power, which they already possess. For if they can expel *whom* they please, they may declare the consequence to be *what* they please; and are completely absolute. Such an act would be a renunciation of the trust reposed in Parliament, but could not operate to submit the rights of the people to the *will* of any body of men. Men cannot be transferred from hand to hand, like a flock of sheep. Neither does the acquiescence of the Legislature always make Law, otherwise any one branch thereof, *possessing an absolute negative*, might enjoy what power it's Members were pleased to assume. None can judge between this branch of the Legislature and the people; because none are superior in the State. Opposition must at first be made by remonstrance; and in this the people have sometimes supported the Lords against their own Representatives, in defence of the Constitution. If these means fail, the contest can only be decided by an appeal to the God of Battles. By what authority was James the Second expelled from his throne? No written law existed upon this subject. No superior entitled to judge between him and his people. He assumed the legislative power, and thereby broke the original compact; or, in other words, the fundamental laws, from which alone all right to power must be derived. He was, therefore, justly deposed. We cannot doubt but
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our King, whose ancestors obtained the Crown in consequence of such a Revolution, will join his people in resisting every attempt of an House of Commons to assume legislative power to themselves. The power of dissolving Parliaments is the means entrusted in his hands for this purpose; and, to doubt his exertion of such right, if the obstinacy of any body of men should render this necessary, would be a degree of guilt little short of treason to the House of Hanover.

My Essay was hastily written, and published with little correction; I, nevertheless, find that (misrepresentation removed) there is but one argument in your Pamphlet, on the head of Expulsion, which has not there received an answer. The Power of Expulsion in Corporations did not escape me; but I avoided mentioning what was obviously inapplicable, I might say that Corporation Law was established, when the crown exercised a Legislative Power in almost every part of government; when opinions of judges were easily procured to sanctify an arbitrary act by legal forms; when all foreign commerce was abandoned to the will of the crown; when the idea, that a legislative power over others than their own members might be derived to corporations by a grant from the crown was adopted by parliament, who enacted in the 19th year of Henry the Seventh, "That no trading company shall make bye-laws, which may affect the common profit of the people, unless they be approved by the chancellor, treasurer, and chief justices, or the justices of assize in their circuits." All these arguments I shall not insist upon, for this of Corporations is the very instance I should have chosen to illustrate all my principles. The member is always expelled by the body which possesses the Legislative Power in that community, from the consent of all the members expressed by voluntarily becoming such, or, in new corporations, by an acceptance of the charter. This power generally resides in the body at large. In either case it is exactly analogous to a bill of banish-

banishment, which I believe you will not pretend the House of Commons could enact by their *sole* authority.

This exercise of legislation by bodies corporate after the designation of a particular object, has been found from experience to be so liable to abuse that the court of King's Bench has, with the general approbation of the kingdom, assumed a power of commanding by writ the re-admission of members expelled, and has, by repeated adjudications, reduced this claim to a mere power of declaring a forfeiture of the franchise at common law subject to the reversal of a superior tribunal.

There is yet an assertion, not an argument, which may deserve attention. You say, whether a power to send an offending member back to his constituents, for them either to confirm or reprobate their former choice, may not be properly vested in the House of Commons, cannot be seriously considered. It involves a degree of ridicule, not to be expressed. Good Sir! be not outrageously wise. The principle has already been adopted by parliament. Decency, therefore, requires we should be moderate in our comments. This would be nothing more, than a power in the House of Commons to do in particular cases what the Legislature has done respecting a general class of men. By the place-bill parliament has declared, that the acceptance of certain offices may make such a change in the member, that the people may no longer choose to trust him: That therefore they ought to proceed to a new Election. This act supposes the right of *choice* in the people. If, indeed, the Power of Expulsion is considered as a right of Election in the representative body, *who shall or shall not sit among them*; if the people must be contented with a *corbe d'elire*, then indeed such a limitation would be truly ridiculous. But perhaps you will not affirm this to be the Spirit of our Constitution. For my own part, I shall be perfectly satisfied to see the pretended Power wholly abolished, and the people governed by general, equal laws.

THE AUTHOR.



